

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

LARRY WILBURN, JR.,

Plaintiff,

-against-

CITY OF ALBANY, City of Albany Police Officers
DEVIN ANDERSON and JOHN DOE 1, whose name
Is presently unknown, individually and/or as agents,
Servants, and/or employees of the City of Albany;
COUNTY OF ALBANY; HON. CRAIG D. APPLE,
Albany County Sheriff; JOHN/JANE DOE 2 and 3;
CORRECTIONAL MEDICAL CARE, INC., and
JOHN/JANE DOE 4 and 5,

Defendants.

**ANSWER TO
CROSS-CLAIMS**

Civil No.: 1:13-cv-1452
(GLS/CFH)

Defendants, *City of Albany and Police Officer Devin Anderson*, by and through their attorneys, John J. Reilly, Corporation Counsel and Eric P. Sugar, Assistant Corporation Counsel, of counsel, as and for an Answer to the Cross-claims of Co-defendants, *County of Albany, Hon. Craig D. Apple, Albany County Sheriff*, set forth as follows:

1. Denies each and every allegation contained in paragraph 102 of the Co-defendants' Cross-claim.
2. Denies each and every allegation contained in paragraph 103 of the Co-defendants' Cross-claim.
3. Denies each and every allegation contained in paragraph 104 of the Co-defendants' Cross-claim.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

4. The actions set forth in the Cross-claims are barred by the applicable statute of limitations.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

5. The Cross-claims fail to state a cause of action upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

6. The Co-defendants have failed to obtain personal jurisdiction over these answering defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

7. That answering defendants' liability for non-economic damages, if any, is limited pursuant to Article 16 of New York Civil Practice Law and Rules.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

8. The Co-defendants have failed to comply with the applicable provisions of the General Municipal Law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

9. That these answering defendants are entitled to a qualified immunity defense.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

10. That answering defendant, Devin Anderson, in his official capacity as a Police Officer within the Albany Police Department cannot be held liable for punitive damages.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

11. At all times relevant to the acts alleged in the Cross-claims, the duties and functions of the municipal defendants' officials entailed the reasonable exercise of proper and

lawful discretion. Therefore, these answering defendants have governmental immunity from liability.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

12. That punitive damages may not be recovered against a municipality.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

13. That whatever injuries or damages may have been sustained by Co-defendants, as alleged in the Cross-claims, were caused, in whole or in part, by the negligent act(s) and/or omission(s) of Co-defendants.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

14. Whatever injuries or damages were sustained by the Co-defendants at the time and place alleged in the Cross-claims were the result of the contributory negligence of the Co-defendants in being otherwise careless and negligent and by the assumption of the risk and without any negligence or carelessness on the part of the answering defendants contributing thereto.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

15. That whatever injuries or damages the Co-defendants may have sustained at the time(s) and place(s) alleged in the Cross-claims were contributed to by the culpable conduct and want of care on the part of the Co-defendants and without any negligence, fault, or want of care on the part of the answering defendants.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

16. That whatever injuries or damages the Co-defendants may have sustained at the time(s) and place(s) alleged in the Cross-claims were sustained by reason of Co-defendants' own intentional and wrongful conduct.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

17. The officers, employees, agents of the City of Albany were acting lawfully and within their statutory duties.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

18. That any actions on the part of the answering defendants were justified, in good faith, without malice, with good and legal justification, based on reasonable and probable cause, and reasonable and necessary under the circumstances.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

19. That any negligence alleged on the part of the answering defendants was not a proximate cause of the injuries/damages alleged.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

20. That the Cross-claims are barred by the doctrines of laches, equitable estoppel, *res judicata* and/or collateral estoppel.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

21. The answering defendants are entitled to full or partial indemnification and/or contribution as against the Co-defendants, jointly or severally.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

22. The answering defendants contend that they cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Co-defendants' Cross-claims. Accordingly, these answering defendants expressly reserve the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

DEMAND FOR JURY TRIAL

23. Answering defendants hereby demand a trial by jury in the instant action.

WHEREFORE, the answering defendants demand judgment dismissing the Cross-claims contained in the Answer of Codefendants, *County of Albany, Hon. Craig D. Apple, Albany County Sheriff*, herein in its entirety, together with costs and disbursements of defending this action, including attorney's fees, together with such other and further relief as the Court deems just and proper.

Dated: February 7, 2014
Albany, New York

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